

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LARRY SPENCER,

Petitioner,

v.

STATE OF WISCONSIN, STUART  
SCHWARTZ and NEW LISBON  
CORRECTIONAL INSTITUTION,

Respondents.  
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ORDER

08-cv-017-bbc

On April 2, 2008, I denied petitioner's request for leave to proceed in forma pauperis and dismissed this case for lack of subject matter jurisdiction over petitioner's claims. Before the case was dismissed, petitioner made an initial partial payment of the filing fee in the amount of \$.85. The unpaid balance of the filing fee is \$349.15, which is required by statute to be paid in monthly payments of 20% of the preceding month's income. 28 U.S.C. § 1915(b)(2).

Now petitioner has written to request the "return" of his \$350.00 filing fee in light of the fact that he has not been allowed to proceed in this court. Because petitioner has paid only \$.85 toward his debt, I understand him to be asking that the court waive the

requirement that he pay the remainder of the filing fee. Unfortunately, that request must be denied.

As the name suggests, the \$350 fee is the fee for *filing* a case. This fee must be paid even when a prisoner's case is dismissed at the outset. One of the primary objectives of the 1996 Prison Litigation Reform Act is to deter meritless litigation by encouraging prisoners to weigh carefully the benefits of bringing a federal lawsuit against the significant financial burden of having to pay the fee for filing the lawsuit. The deterrent effect of the act would be lost entirely if prisoners were excused from paying the filing fee where, as here, the case should not have been filed in federal court.

#### ORDER

IT IS ORDERED that petitioner's request that he be excused from paying the remainder of the filing fee in this case is DENIED.

Entered this 14th day of April, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge